

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK-----X
LEWIS LEFKOWITZ,

Plaintiff,

- against -

CRUNCH FITNESS USA and YVAN JOHNSON,

Defendants.
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07 Civ. 2994 (WHP)

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RULE 26(F) REPORT

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In accordance with this Court's Order For Initial Pretrial Conference (the "Order") dated May 17, 2007, which ordered that counsel confer prior to the pretrial conference scheduled by the Court to take place on June 15, 2007, regarding all subjects to be considered pursuant to Rule 26(f) of the Federal Rules of Civil Procedure and to file a written report outlining their discovery plan pursuant to that Rule at least seven (7) days prior to the initial pretrial conference: defendants AGT Crunch Acquisitions, LLC ("AGT") (incorrectly named in the Complaint as Crunch Fitness USA) and Yvan Johnson ("Johnson") (collectively AGT and Johnson shall be referred to as "Defendants") submit the following report:

1. Defendants were not served with the Order, (as the Order directed), but only recently learned of it as a result of counsel's monitoring the Southern District of New York's Electronic Case Filing ("ECF") system. Defendants' counsel has just completed the ECF registration process which now permits Defendants' counsel to access the ECF system directly (Defendants' counsel was not ECF registered at the time of the filing of the Order).

2. Having learned of the Order, Defendants' counsel obtained Plaintiff's counsel's telephone number through directory assistance (because Plaintiff's counsel's telephone number did not appear on the Complaint filed with the Court). (Defendants' counsel subsequently

confirmed the number received through directory assistance by reference to the telephone number which appears on Plaintiff's Proposed Amended Complaint.) While Defendants' counsel telephoned Plaintiff's counsel, Defendants' counsel was not able to reach Plaintiff's counsel. In a further effort to reach Plaintiff's counsel, Defendants' counsel has sent a letter to Plaintiff's counsel regarding this matter. (A copy of that letter is annexed as Exhibit A.)

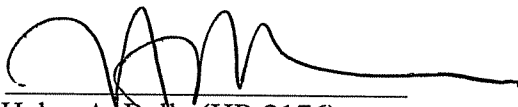
3. Insofar as Defendants' counsel is aware, Plaintiff's counsel has made no attempts to contact Defendants' counsel and confer regarding this matter.

4. As a result of the foregoing, counsel has not been able to confer and thus cannot file a written discovery plan as required by the Court. In addition, since Defendants' counsel was also not served with Plaintiff's letter to the Court dated May 22, 2007, regarding Plaintiff's proposed motion to amend the complaint, Defendants' counsel did not have the opportunity to respond timely to Plaintiff's counsel's submission.

5. Defendants' counsel is ready, willing and able to comply with the Order and shall promptly file an amended report once Plaintiff's counsel makes himself available to confer.

Dated: New York, New York
June 8, 2007

SILLER WILK, LLP

By 
Helen A. Rella (HR 2176)

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To:

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Exhibit A

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June 8, 2007

Via By Hand Delivery

James B. LeBow, Esq.
488 Madison Avenue, Suite 1100
New York, NY 10022

Re: Lefkowitz v. Crunch Fitness USA and Yvan Johnson
Index No: 07 Civ. 2994

Dear Mr. LeBow:

As you are aware, we are counsel to AGT Crunch Acquisitions LLC, (incorrectly named as Crunch Fitness USA) and Yvan Johnson ("Johnson"), in the above-named matter.

We only recently learned of both your letter to the Court (and your proposed amended complaint) (the "Letter") as well as the Court's "Order For Initial Pretrial Conference" (the "Order"), both dated May 17, 2007; neither were served on us, as you were specifically required to do. (ECS registration has just been completed and was not in effect at the time of the filing of the Letter and Order, thus service was required.) Your failure to serve us with your Letter deprived us of the opportunity to timely respond; similarly your failure to serve us with the Order deprived us of appropriate notice and the time to confer regarding this matter, and effectively prevented the timely filing of the Rule 26(f) report with the Court.

In accordance with the requirements of the Order (which requires, *inter alia*, that counsel confer prior to the pretrial conference regarding all subjects to be considered pursuant to Rule 26(f) of the Federal Rules of Civil Procedure, and to file a written report outlining their discovery plan pursuant to that Rule at least seven (7) days prior to the initial pretrial conference) we have attempted to contact you by telephone. Unfortunately, our efforts have been to no avail. Given that under the terms of the Order, a report was due to the Court today, in accordance with the Court's directive, we have filed a report apprising the Court as to the situation.

The foregoing notwithstanding, would you please contact us so that we may confer, as required by the Court.

Sincerely,

Siller Wilk LLP

By: 

Helen A. Rella (HR 2176)